

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**SCION 2040 MANAGING MEMBER LLC,**

**Plaintiff,**

**v.**

**Case No. 10-C-825**

**EBREF HOLDING COMPANY LLC and  
ASB ALLEGIANCE REAL ESTATE FUND,**

**Defendants.**

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**ORDER DENYING PLAINTIFF’S EXPEDITED MOTION TO STRIKE**

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Currently pending before the court is the plaintiff’s expedited motion to strike or exclude the experts and expert reports proffered by the defendants. (Docket No. 37.) The expert opinions relate to the defendants’ counterclaim seeking equitable reformation of the LLC agreement that is at the heart of this litigation. Each expert opines as to the generally understood meaning of the term “promote” when used in the real estate industry. The term “promote” is contained within the disputed portion of the LLC agreement. Additionally, one expert offers what the plaintiff characterizes as legal conclusions.

In the view of the plaintiff, the experts and their reports should be stricken because opinions as to how a term is generally understood in the real estate industry are irrelevant in a reformation claim. Rather, reformation depends upon what the parties to the transaction understood. The defendants respond that the expert opinions are admissible because they will help the court in understanding the parties’ contract and their respective understanding of that agreement.

In the court's view, the admissibility of the proffered expert testimony such as this depends upon the context in which it is offered. Lacking the requisite context, the court is unable to make a determination as to the admissibility of this proffered evidence at this preliminary stage. The arguments raised by the plaintiff are most appropriately dealt with in conjunction with one of the dispositive stages of the case, i.e. motions for summary judgment or trial. Accordingly, the plaintiff's motion, (Docket No. 37), is hereby **denied without prejudice**.

**SO ORDERED.**

Dated at Milwaukee, Wisconsin this 17th day of August, 2011.

s/AARON E. GOODSTEIN  
U.S. Magistrate Judge